

Centre for Peace and Conflict Studies



The University of Sydney

Blundering in? The Australia-Indonesia Security Treaty and the Humanitarian Crisis in West Papua

By Jim Elmslie with Peter King and Jake Lynch



A report prepared for the West Papua Project at
the Centre for Peace and Conflict Studies, The University of Sydney, March 2007

ISBN 1 86487 832 0

Published by the West Papua Project at the Centre for Peace and Conflict Studies
The University of Sydney

© Jim Elmslie, Peter King and Jake Lynch

Cover design by Breakout Print and Design

Printed by Breakout Print and Design

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the permission of the authors.

Table of Contents

Executive summary.....	5
Introduction.....	7
Mulia conflict, Central Highlands, West Papua.....	9
- Relief	
- Sequence of events	
- Report from the Revd Socratez Sofyan Yoman	
Human Rights situation.....	13
- Human Rights Watch report	
- Case of Freeport Protestors	
Special Autonomy – an opportunity missed.....	19
- Further abuses	
- Failed special autonomy and Australia	
Australia–Indonesia Security Treaty.....	23
- Interpretation of the International Commission of Jurists	
- The Indonesian Government’s view of the Treaty	
- The Australian Government’s view of Treaty	
- Indonesian civil society’s view of Treaty	
Conclusion: Blundering In?.....	27
- Australia will be a de facto ally with Indonesia against West Papuans	
- This will only entrench TNI further and block democratisation	
- Australian’s own human rights will be at risk	
Recommendations.....	27
- Parliamentary delegation to visit West Papua prior to ratification	
- Clarification of exact ramifications of Article 2.3 for Australians	
- Recognition of paramountcy of human rights in Australia and Indonesia	
About the Authors.....	28
West Papua Project Publications.....	28
Map	29

Executive Summary

The conflict in West Papua has given rise to an ongoing humanitarian emergency.

At the same time, the human rights outlook for the West Papuan people is worsening.

Political prospects are clouded, with the Special Autonomy package for West Papua now in ruins.

The Security Treaty Australia has signed - but not ratified - with the Indonesian government will make this conflict worse.

It amounts to a decision to take sides with the corrupt Indonesian military against the West Papuan people.

It threatens human rights, not only in West Papua but also in Australia itself.

It must be re-thought and re-written, or rejected.

This report raises the alarm over the sharp deterioration in the humanitarian outlook for people in remote areas of West Papua, illustrated by the current crisis in and around Mulia, capital of the central highlands regency (district) of Puncak Jaya, and the human rights situation generally in Papua province, with harsh criminal sanctions being used to crush peaceful protest. It calls for these concerns to be thoroughly investigated before Australia enters into the proposed new security treaty with the Indonesian government, which has been signed but not yet ratified.

The Mulia conflict is part of an ongoing expansion of the Indonesian military (TNI) in remote regions of West Papua, which inevitably leads to confrontation with the indigenous population. This confrontation is then used to justify, and increase, TNI's military presence, and to block civilian authority. Local sources, quoted in this report, accuse the military of using provocateurs to trigger violent incidents around Mulia, in order to justify their greater deployment there, and in other parts of West Papua.

The result is a military fiefdom, with all the illicit spoils of control over the mining and logging industries, as well as the broader economy, being the TNI's reward. This system results in great suffering for the Highlands people, and all West Papuans, as they become pawns in the military's machinations.

Evidence of the consequences of these machinations is found in two recent reports: the Council of Papuan churches report on the Mulia situation and a report by the US-based monitoring group, Human Rights Watch (HRW) on political prisoners in West Papua. The first details how the Highlands people in the Mulia region have been made internal refugees, their homes, gardens and churches destroyed. The latest messages from observers with first hand knowledge of the situation say they are currently in a precarious state with inadequate food and shelter and at the mercy of disease with no access to basic medicine. People have already started to die from their deprivation.

At the same time, the report by Human Rights Watch shows how peaceful protest against the gigantic Freeport copper mine in neighbouring Mimika regency, and support for self-determination, have resulted in imprisonment, torture and extra-judicial killings. At least eighteen political prisoners are currently serving long jail sentences in cases where there is no dispute that their actions were purely peaceful, including merely being present when the Morning Star flag of the Papuan independence movement was raised. Many more maintain they have been falsely accused of violence as a pretext for being arrested and locked up.

Between them, these reports indicate that the situation is deteriorating as economic expansion and contrived incidents increase the presence of Indonesian military forces and inevitably lead to conflict. The plight of the displaced villagers of Puncak Jaya, and the protesters in prison cells, stands to be replicated across West Papua. Such an empowerment of the TNI in domestic affairs blocks the

entire Indonesian democratisation process and entrenches corruption, militarisation and the culture of impunity for prosecution of crimes by military and police personnel.

It is to this deteriorating situation that Australia now risks blundering in.

The Framework Agreement on Security Cooperation between Australia and Indonesia, signed last November (the Lombok Treaty) has, as its central feature, the intention of stifling support in Australia for human rights and self-determination in West Papua. There is no mention of human rights at all in the Treaty. Such a Treaty further enhances the odious power of the TNI within Indonesia's domestic affairs and is rigorously opposed by progressive elements of Indonesian civil society. The Treaty will, in effect, make Australia a military ally of the TNI in their money-driven conflict with the indigenous people of West Papua. It also has the potential to create human rights abuses in Australia as a fundamental right - that of free speech - is thrown into question by the poorly worded and ambiguous Article 2.3 of the Treaty.

Article 2.3 (Principles), commits each party (the respective governments) not to support separatist movements in the other party's territory. It also commits each party not to 'support or participate in activities...by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other party'. Does this mean only official government involvement, or does it extend to private citizens expressing their own views? This is unclear, although it appears that the Indonesian government understands that this commits the Australian government to suppress groups or individuals who express support for West Papuan self-determination, or even human rights, if such support could 'constitute a threat to the stability, sovereignty or territorial integrity of the other Party'.

The exact consequences of Article 2.3 should be spelled out before this Treaty is ratified – for the benefit of both the Australian public and the Indonesian government. Not to do so means that a conflict of interpretation is inevitable: either between Australian citizens exercising their basic rights and the Australian government; or between the Indonesian and Australian governments when Australia refuses to restrict activities that it sees as freedom of speech, but which the Indonesian government interprets as support for separatism.

We need assurances in the treaty itself, now, that Australian citizens who campaign for West Papuan self-determination or independence, within Australian law, will not find themselves persecuted, or their right to free expression curtailed by the authorities in their own country, at the behest of the government in Jakarta.

Recommendations

This report makes several recommendations.

- An Australian Parliamentary delegation should visit the province of Papua to determine first-hand the current political situation and reflect whether Australia wants to give TNI a blank cheque in Papua, and whether participation in the Lombok Treaty will enhance Australia's security and encourage Indonesia's democratisation.
- The exact consequences of Article 2.3 should be made explicit. For instance, will the peaceful expression of support: spoken; written and acted out, for self-determination or independence for West Papua, including providing support and shelter for West Papuan independence activists, constitute a breach of this Treaty, and if so, what action would the Australian government take, and under what law(s)?
- The Treaty text needs to be amended to affirm the upholding of human rights, both in Australia and Indonesia, as a supreme duty of any government to its citizens. Without this the Treaty will only reflect the vested interests of the few, including temporarily empowered public servants and politicians. The right of movement of media and human rights monitors to areas of conflict should be a vital ingredient of the treaty.

Introduction

West Papua has been disputed territory since the Japanese army was driven from the Dutch East Indies at the end of World War II. Indonesian nationalists triumphed over the returning Dutch colonists and created the modern state of Indonesia in 1949 – in all of the Dutch territories except West Papua. This was a reflection of the military realities on the ground. Indonesia never resiled from its claim that West Papua was inalienably part of Indonesia as the successor state for *all* the Dutch colonial assets. The Netherlands, on the other hand, in the period 1949 to 1962, set West Papua on the path of independence.

The Netherlands and Indonesia clashed over the future of West Papua in the late 1950s. President Sukarno decided to bring the issue to a head by initiating military action in 1961. Under pressure the Americans threw their support behind the Indonesians and the game was up for the Dutch, who withdrew ignominiously. After a short United Nations interregnum the territory was transferred to Indonesia in 1963 and in 1969 the UN-supervised 'Act of Free Choice,' involving 1026 coerced 'representatives' of the indigenous Papuans, confirmed the transfer.

Remote, and of no great strategic importance to anyone (bar Australia, which chose to support Indonesia, and an emerging independent Papua New Guinea), West Papua became an Indonesian province. Large-scale inward migration marginalised the West Papuan population in urban areas, and is now threatening to do so across the entire province. The non-indigenous population has increased from 4% in 1971 to nearly 50% at the current time. Profound differences remain between the indigenous Melanesian population and the incoming Asian Indonesians, including: religion (animism and Christianity on the one hand, Islam on the other); race; culture; values and goals (the acquisition of money versus the survival of a culture and a people). Conflict was inevitable.

Conflict took the form of large-scale military confrontation in the 1960s and 1970s in which the Indonesian military forces easily triumphed. Low-level guerrilla warfare has persisted until the present. Non-violent political activism for an independent West Papua received a boost with the fall of the Suharto regime and the independence of East Timor. That push continues with growing public support in Europe, the US, the South Pacific and Australia, fuelled both by a basic concern for human rights and the belief that a grave injustice has been visited on the West Papuan peoples.

In 2001, Indonesia passed a Special Autonomy (*Otonomi Khusus* or *Otsus*) law for Papua. Many countries, including Australia, have called for its full implementation as the best way to provide for the rights of all the people of West Papua and the basis for a secure shared future. Under prompting from churches and human rights groups following the Papua Congress "declaration of independence" in June 2000, the Free Papua armed resistance movement, the OPM, renounced violence in favour of political advocacy. Meanwhile, in 2006, Indonesia signed up to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

But the opportunity afforded by these developments is now slipping away. The political future promised by Special Autonomy has been clouded by a proliferation of new regional structures and levels of bureaucracy. Any confidence it might have enjoyed, as a vehicle for aspirations to self-determination, has been drained by its failure to bring any positive change in the daily life or outlook of ordinary people. The main OPM factions have abandoned their ceasefire and the Papuan Tribal Council voted to "return" *otsus* to Jakarta in 2005.

Lately, the oppression of the West Papuans has increased with economic expansion of the logging, mining and gas industries drawing in more and more TNI forces who engage in rent-seeking behaviour through extortion, bribery and direct control of sectors of the economy. The independence of East Timor, and the successful peace process in post-tsunami Aceh, have also freed large numbers of TNI for redeployment to Papua.

The Indonesian-West Papuan conflict takes many forms, one being the provoking and fomenting of armed conflict in remote areas, the focus of this report. Such conflict reinforces the case for TNI presence in the name of national security and territorial integrity. It also entrenches TNI's political and economic control of the province, and its own culture of impunity: the TNI are above the rule of law. This undermines Indonesian civil society and impedes the establishment of meaningful

democracy, which must include an independent judiciary and a civilian-controlled military.

Currently, armed conflict is taking place in the Mulia area in the mountainous interior of West Papua. The purpose of this report is to examine this conflict using the most recent and credible information available and assess the consequences of conflict in light of the recently signed Treaty with Indonesia. The repercussions for Indonesian civil society, Australian's own civil and human rights and for the West Papuan people are then examined.

Mulia conflict, Central Highlands, West Papua

The plight of the thousands who have fled their villages near the town of Mulia is grave. In a report from the Papua-based Institute for Human Rights Study and Advocacy (ELSHAM), a representative, Diaz Gwijangge, said:

“They fled after the military and the police attacked the area after a flag of the Free Papua Movement [*Organisasi Papua Merdeka*, or OPM] was hoisted. Now they are too scared to return. At least four people have already died of hunger and disease, and the toll is bound to rise fast, unless help is delivered soon”.

ELSHAM also said the villagers were now encamped in makeshift shelters, in an inaccessible area two days' walk from the nearest town. The area is infested with mosquitoes carrying malaria and dengue fever. To make matters worse, the refugees – fearing military reprisals – have reportedly cut most of the rope bridges that link the area to the outside world, ELSHAM said¹.

A late update from ELSHAM, received just as this report went to press, related how local officials had gathered refugees to a feeding station, which was then approached by soldiers, causing the people to scatter in fear.

The response by TNI is denial that there are any such displaced people. But that is belied by the degree of detail - including precise numbers from each place - in a carefully compiled situation report² by observers from a church group, the Ecumenical Council of Papuan churches (PGGP), who visited the area in late January 2007.

The PGGP Pastoral Team, led by the Reverend Lipiyus Biniluk, found 5,137 people “living in hunger”. They were housed in appalling conditions: “In [the village of] Yambuni, seven to eight families stay together in one traditional house (*hona*), and in former kiosks or pig stalls without proper food... They also suffer from sicknesses such as malaria, scabies and swollen spleens”.

“Refugees in Ilabraui live with five to six families in one traditional house (*hona*) without proper food. Refugees from Igunikime who are accommodated in Temu experience difficulties with the local inhabitants (Wano clan) due to different traditions. After the refugees had received a part of a [sweet] potato field they were asked to go back to their place of origin or search for edible ferns in the forest as there was not enough food”.

The report gives the name, age and gender of four refugees who, by that stage, barely a month after fleeing their homes, had “already died due to a lack of food and medicine”:

1. Tanno Telenggen (Male, 50)
2. Laya Morib (Male, 30)
3. Mitiles Morib (Male, 20)
4. Walia Wonda (Male, 41)

In a further update, a 30-year-old woman, Kawuti Wonda, is reported to have died from malaria, contracted while sheltering in the forest.

Relief

The PGGP raised with relevant authorities in the area the need for urgent relief supplies to reach the displaced villagers, but, they explain, this was blocked due to suspicions on the part of the TNI that any medicines might fall into the hands of the pro-independence Free Papua Movement:

¹ Quoted in ‘Refugee crisis looming in Papua, says rights group’, Fabio Scarpello, *South China Morning Post*, February 26, 2007

² *Report on the situation in Mulia based on a visit by the Pastoral Team of the Ecumenical Council of Papuan churches (PGGP)*, Jayapura, January 29, 2007

“Volunteers and members of the medical aid team of the Health Department already requested that the Department send medicine and health personnel to the refugee areas. This however has not been approved yet due to the experience of the year 2004 when the security forces found medicine in Guragi/Tingginambut which they suspected was given to OPM/TPN instead of to the health centre”.

The response of the regional Puncak Jaya government was to attend a “Ceremony of Prayer”, the report notes dryly, “asking for peace and urging the refugees of the community to come back to their villages”.

On a more practical note, it says, “The Secretary of the Puncak Jaya government promised six tons of rice and medicine from Wamena to overcome the crises in the refugee areas in the Yamo District. [but] the attention and staff of the local government at this time is focused on the Regent elections. That is why a strong push from the Governor is needed. Otherwise the process in the field will be delayed and not completed”.

In any case, the report says, supplies could only be brought to where they were needed if the rope bridges were replaced. It quotes the Secretary of the Puncak Jaya government appealing to churches themselves to fund this, as the government had already spent Rp 50m (something under AUD\$7,000) on repairing them.

Sequence of events

How, then, did the villagers come to flee their homes in the first place? A report from Paula Makabory (in Melbourne exile), and her former colleagues at ELSHAM Jayapura, sets out the background.³

In the year 2004, during military operations, at least 6,000 Papuans from 27 villages took refuge in the jungle, causing 35 people (15 of them children) to die in refugee camps. The whole area was closed off by TNI and no access given to humanitarian workers including media.

In November 2005, an old blind man, Tolinawin Gire (71), was killed when the security forces were conducting an operation to hunt for Goliat Tabuni, an OPM leader. The Security Forces also burned people’s homes, the district administrative office, the polyclinic and the school and destroyed people’s gardens in the district of Yamo. Eight local civilian men were also arrested during the operation.

On November 13, 2006, there was a riot in Mulia, the capital of Puncak Jaya, after the distribution of fuel allowances. It was reported by a witness that some people’s names were not on the list of those entitled to receive the allowance. This riot is reported to be triggered by local politicians who were involved in nominating candidates for the position of Bupati (district head) in the elections to be held in the district of Puncak Jaya for the period of 2007-2012.

On December 8, 2006, two Indonesian Army men, Joko Susanto (Special Forces Command member) and Tobias Sirgen (retired armed services officer) were killed.

It was stated by the Indonesian military commander at the TNI headquarters in Jayapura that these two military personnel were undertaking negotiation with the Goliat Tabuni OPM/TPN [Free Papua resistance army] group.

The perpetrators have not been identified nor has the group that was responsible for this incident. The shooting incident or the killing of these two victims coincided with the declaration of the Regent candidates, Lukas Enembe, SIP (Regent) and Drs. Henock Ibo (Deputy-regent). On the same day (8 Dec 2006), the Morning Star Flag was flown at Kumibaga Hill, about 500 meters from Mulia town. That Goliat Tabuni as a Commander of

³ *Email: Paula Makabory to Peter King, March 19, 2007*

the TPN/OPM was responsible for the incident and the raising of the Morning Star flag has not been confirmed yet.

In a number of regions, a number of villages in the province of Papua, the Indonesian military has been attempting to conduct counter-insurgency operations against presumed separatists. The problem is as the United States State Department itself pointed out, that it classifies anyone it is targeting for any reason whatsoever as a separatist.

On December 24, 2006, A Morning Star flag was flown at the same location as before in Mulia. It was larger than the flag flown previously. On this occasion, an unknown group started calling for war against the two candidates for Regent and Deputy-regent, Lukas Enembe, SIP, and Drs Henok Ibo. The PGGP (*Pimpinan Gereja-Gereja Papua*, Church Leaders of Papua) Investigation team asked the TPN/OPM group led by Goliat Tabuni about their involvement, but they denied having written anything or having supported any of the candidates.

Following the incident, the people were struck by fear and trauma as a result of which they fled from Mulia. In particular government employees and their families and those who come from outside Mulia decided to leave Mulia. Some of the local civilians locked themselves inside their houses. Mulia town was reported as a dead town.

Since mid-December, 2006 there has been deployment of large numbers of Indonesian armed forces, intelligence and police in the mountainous Puncak Jaya region. The personnel are drawn from Battalion 756 from Wamena, TNI Batalion 753 from Nabire, Kopassus (Indonesian Army Special Forces Command), Brimob (Police Mobile Brigade), POLRES (Local Police) and Intelligence agencies BIN and BAIS.

This account by the PGGP serves as an apt illustration of how the grip of the TNI is tightening on ever-greater swathes of remote territory. There is every reason to fear that the fate of the Mulia villagers will be replicated in more and more communities and that the overall humanitarian situation in West Papua is worsening.

The PGGP report notes that:

“The riots caused the country a financial loss reaching billions of Rupiah as governmental buildings and houses of members of the DPRD (the Jayapura-based Regional [Provincial] People's Representative Council) were destroyed and burned down by the mass”.⁴

On 27-28 December 2006:

“An increase of military troops in Mulia by helicopter is reported”.

The report relates that members of the OPM/TPN fled shortly afterwards, as police from the heavily armed Mobile Brigade, the Brimob, were deployed in the area:

“Brimob troops arrive at the flag raising location. Afterwards the Indonesian military arrives establishing a permanent post and raising the Red-and-White Indonesian Flag until now. ... Gumi Morib (34) is killed by Brimob undergoing an operation against those responsible for the flag-raising. The victim is buried according to Lani [tribal] tradition by his family on 6 January at 2 pm in the village of Terewarak, Dondopaga, approximately 50 meters from the location of the shooting”.

On 6 - 7 January, 2007:

“The Lani people in the Yami Regency begin to evacuate”.

⁴ *Report on the situation in Mulia*

Report from the Revd Socratez Sofyan Yoman

It cannot be proved either way, whether the riot and the killings of the one serving and one retired military officer were the work of provocateurs. Another church source, the Revd Socratez Sofyan Yoman (President of the Fellowship of Baptist Churches of West Papua), has blamed “fake OPM who had been trained by the Indonesian military” for the incident.⁵

As noted above, on December 24, 2006 a larger-size Morning Star flag was raised on Kumibaga hill near Mulia. According to Revd Yoman: “This raised the question of who made the flag and whether the fake OPM had a sewing machine and whether they had the skills to operate the machine in the jungle”.

Seasoned TNI observers will recognise the pattern. There is a deep-rooted conflict in West Papua, borne of historic injustice and continuing oppression. A ceasefire on the part of the main armed rebel group brought no progress. It would not be surprising to find violence flaring.

But there is a long record of well-attested allegations, in many parts of Indonesia, of violence being provoked or fomented, and of this being seized on as an excuse for military deployment, putting the TNI in position to run businesses, exact protection money and so forth. And, where the military is deployed, complaints of abuse from local people often follow. It is fear of suffering such abuses that led the stricken population of this area to flee.

Revd Yoman recounts more recent incidents in and around Mulia which have worsened the plight even of West Papuans in the area who have stayed in their homes:

Local indigenous West Papuans live continuously under heavy terror and intimidation because the Indonesian military has isolated them [from food gardens or other help] and because of the military’s harsh control/sweeping... Every corner of Mulia town and the entry points from Guragi (from the East), Yamo (North), Mepagaluk (West), and Yambi (South) are heavily guarded by military and mobile brigade personnel.

Every passing indigenous Papuan was searched thoroughly and their belongings were seized. For example, the military and the police took and kept the Papuans’ kerosene, which is important for woodcutting.

On 22nd February 2007 the regional government, the regional house of parliament, the Indonesian military and the Indonesian police had a meeting and had agreed to establish eight more military posts in the villages around Tingginambut, Guragi region, which is East of Mulia town, in the Mepagaluk village, West of Mulia town, and in Yambi village, South of the Mulia town. On 20th February 2007, two platoons of the Indonesian military attacked community villages in Yamo.

⁵ Socratez Sofyan Yoman, *Genocide, Military Operations & Islamization under Special Autonomy in West Papua*, Jayapura, March 2007

Human Rights situation

If the humanitarian outlook for people in West Papua is deteriorating, because of the pattern of events exemplified by those at Mulia, then the human rights situation has also taken a turn for the worse over recent years. The monitoring group, Human Rights Watch, recently raised the alarm in its report, *Protest and punishment – political prisoners in Papua* (February 21, 2007)⁶.

The Human Rights Watch report

Sections of the report are reproduced here:

One consequence of Papua's remoteness has been that a series of criminal convictions in recent years of peaceful political activists has not attracted the attention it deserves. A low level armed separatist insurgency in the province has resulted in a large military presence and a climate of mutual suspicion and fear. All too often Papuans not involved in the armed insurgency are caught up in anti-separatist sweeps or arrested as trouble-makers for peacefully expressing their political views, a right protected by basic international free speech guarantees.

Pro-independence activists are frequently targeted for arrest. December 1 has been designated a 'national day' by Papuan nationalists, commemorating the day in 1961 when a group of Papuans, promised independence by then-colonial ruler Holland, first raised the Papuan national flag, the *Bintang Kejora* (Morning Star) flag. Every year people mark this event by again raising, or attempting to raise, the flag. Most years these attempts end in clashes with local security forces intent on stopping what they see as treasonous activities against the Republic of Indonesia. They have almost always ended in arrests, and sometimes trials and convictions, often for the peaceful expression of political dissent. At other times activists are arrested merely for publicly expressing support for Papuan independence, or for attending peaceful meetings to talk about self-determination for Papua...

Criminal laws

Indonesian authorities commonly use two sets of criminal laws against activists in Papua. The first is the colonial era 'hate sowing' (*Haatzai Artikelen*) articles of Indonesia's Criminal Code, which criminalize 'public expression of feelings of hostility, hatred or contempt toward the government' and prohibit 'the expression of such feelings or views through the public media'. The articles authorise prison terms of up to seven years for violations.

The other criminal law provision most often used is one outlawing '*makar*', which translates into English as rebellion. This is often used against persons arrested for their alleged participation in, or support for, separatism. The crime of *makar* is listed in Indonesia's criminal code in a section entitled 'Crimes against the Security of the State' (*Kejahatan Terhadap Keamanan Negara*). The articles authorise prison terms up to twenty years for the offences.

In May 2005, independence supporters Filep Karma and Yusak Pakage were sentenced to 15- and 10-year prison sentences for organising peaceful celebrations and flying the Morning Star flag in the provincial capital of Jayapura on December 1, 2004. They were charged and convicted both of spreading hatred and of rebellion. In an act of defiance, on December 1, 2005, Filep Karma managed to climb from his cell onto the roof of the prison and once again fly the Morning Star flag. Linus Hiluka, a thirty-four-year-old farmer whose case is also described below, is currently serving a 20-year jail term. His crime was his association with an organization called the Baliem Papua Panel, deemed a separatist organisation by Indonesian authorities.

⁶ Full report at <http://www.hrw.org/reports/2007/papua0207/>

These convictions are not an aberration. They reflect government policy.

There has been a long history of suppression of peaceful activism in Papua. Non-violent flag raisers and protestors against Indonesian rule have been arrested, sometimes ill-treated, and convicted for peacefully expressing their discontent through flag raising or other activities. In 2002 alone, forty-two people were arrested in Papua for peaceful independence activities. Over the last few years through a variety of announcements, the governor of Papua, the military commander, and the president of the High Court have also instructed people in Papua not to celebrate December 1. In 2004 the Papuan provincial chief of police, Inspector General Dodi Sumatyawan, stated that 'the anniversary celebration is unlawful and parties who commemorate it will be severely punished'.

Police directive

In December 2005 TAPOL, the Indonesia Human Rights Campaign, a UK-based human rights organisation, uncovered a confidential directive issued on November 10, 2005, by the [then] Chief of Police [of Papua], D.S. Sumantyawan. The directive instructed that anyone engaged in activities on a number of commemorative occasions in November and December would be liable to be charged under Indonesia's anti-subversion law. The terms of the directive make clear that this would encompass even those engaged in peaceful celebrations, which should be protected by the law. One of the dates highlighted by the police chief was December 1. Section Six of the November 10 directive orders police chiefs to:

'Uphold the law in a clear and professional manner against all violations of the law that occur, in particular flying the Morning Star flag or the 14-point star flag [another independence symbol], to arrest and detain those involved and confiscate evidence of flags, to be processed in accordance with the law, to face charges of subversion [*makar*] in a court of law'.

The directive, which was sent in a telegram to all police commands in the territory, said that it had been sent within the framework of an operation called Mambruk II 2005.

Indonesian law distinguishes between cultural symbols used to express Papuan identity and symbols understood as a symbol of sovereignty. International law knows no such distinction. While the Papua Special Autonomy Law, passed in 2001, explicitly allows symbols of Papuan identity such as a flag or song, courts have treated the raising of flags associated with pro-independence sentiment as a symbol of sovereignty and, as such, a banned form of expression.

Peaceful campaigning for self-determination is a right protected by several human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which Indonesia acceded to in February 2006.

Human Rights Watch therefore considers individuals arrested, prosecuted, and imprisoned for peacefully expressing support for independence—whether through flag, song, or other means—as political prisoners. We know of at least eighteen such individuals in Papua. Given the closed nature of Papua, there are likely other cases of which we are not aware and which are not even mentioned in this report.

Peaceful expression

We [HRW] have included only cases where the defendant was convicted for peaceful expression. There are many other cases in Papua where individuals have been charged with or convicted of crimes against the security of the state where it was alleged that the defendant engaged in or advocated violence. Human Rights Watch did not include these cases in the report, even those cases where the allegations of violent activity or advocacy did not appear to be supported by available evidence.

Freedom of expression is a basic right and often acts as an enabler of other rights. Conversely, where freedom of expression is not respected, other rights are rarely secure. In Papua, related human rights concerns include restrictions on freedom of assembly, arbitrary detention, and violation of the prohibition on inhuman and degrading treatment and torture. Until there is increased access to the province for foreign correspondents, diplomats, and independent monitors, including international human rights organisations, it will be impossible to reach clear conclusions about the state of human rights in the province. What is known, however, is cause for serious, ongoing concern.

In 2006 Indonesia succeeded in securing membership of both the UN Human Rights Council and the UN Security Council. In 2006, as already noted, Indonesia also acceded to the ICCPR and the ICESCR. These are signs that Indonesia wants to be accepted as a rights-respecting member of the international community. While Indonesia is certainly in a transition period, the repression detailed in this report shows that there is still much to be done in institutionalizing meaningful protections for basic human rights in the country: That flag raisers, or others peacefully campaigning for Papuan independence, should be imprisoned for their activities is indicative of how far Indonesia still has to go on its journey to become a fully rights-respecting and democratic nation. There is a clear gap between Indonesia's international commitments and rhetoric and the reality on the ground.

The cases of Filep Karma and Yusak Package exemplify how real the gap is. If Filep Karma serves his full sentence it will be 2020 before he is released and he will be 61 years old. He will have spent the majority of his adult life in prison. His crime was nothing more than the expression of an opinion, the expression of a belief. He should not be in a cell for that.

The HRW report goes on to detail these cases and discuss several others – 18 in all - where no-one disputes the fact that the people involved were using entirely non-violent means of protest. There are many other cases, it says, of people being accused of violence and imprisoned, where they maintain that they, too, confined themselves to non-violent protest.

The case of Freeport protesters

West Papua has little or no effective machinery for mediating and settling political issues and conflicts. To register dissent therefore means taking to the streets and running the gauntlet of security services with a long record of brutality, so the potential for violence is ever-present. Nothing better exemplifies this syndrome than recent unrest over the gigantic copper and gold mine run by the US company, Freeport-McMoran, through a local subsidiary.

According to one of Papua's foremost activists, Yosepha Alomang, director of YAMAHAK, (Anti-Violence Foundation for Human Rights):

“All the complexities of the Papuan problem can only be resolved if talks are held between the Indonesian government, the US government, the company and representatives of the Papuan people meeting together on an equal footing to resolve the problems relating to the activities of Freeport”.

In 2005, the company's annual report says it extracted metals worth US\$3.5bn and paid \$1.2bn in taxes and royalties to the government in Jakarta. Despite this, a World Bank report in November 2005 concluded that West Papua has the highest level of poverty in all of Indonesia. Tribal people in the vicinity have lost their land and their rivers have been seriously polluted by tailings from the mine.

The initial contract with Freeport was signed between the company and the Indonesian government in 1967, two years before the so-called Act of Free Choice, which led to West Papua's incorporation into the Indonesian Republic (the contract was re-negotiated in 1991). This casts doubt on the legitimacy of the contract. For all these reasons, the mine has continued to be the focus of protest, leading up to a student demonstration in March, 2006, in the university town of Abepura, just outside the capital, Jayapura. Five members of the security forces, and one demonstrator, died.

The response to this incident has generated further concerns over human rights and the administration of justice in West Papua. The following commentary is from a report by the UK-based monitoring group, Tapol⁷:

The clash that led to the five deaths occurred when members of Brimob, the crack police force with a reputation for brutality, ordered the students to remove a road block which they had just set up. While demonstrating students were pelting the officers with stones and bottles, officers in anti-riot gear pressed the crowd back. Facing a barrage of missiles, the police withdrew, whereupon intelligence agents came to their assistance by opening fire. During this confrontation, three police officers and an air force officer were killed. A fifth police officer received fatal injuries and died in hospital six days later⁸.

Heavy sentences for 21 Papuans

The 23 Papuans, not all of whom were students, were tried in two groups. The trial of the first group of 16 ended with convictions for all the defendants and sentences ranging from five to 15 years. Amnesty International believes that the trials were unfair because of intimidation and ill-treatment of the accused in custody, resulting in forced confessions, and the breach of other fair-trial safeguards⁹.

Neither of the two who received the heaviest sentence of fifteen years, Luis Gedi and Ferdinand Luis Pakage, were students. According to a document received from the Advocacy Team for the 16 March Clash Case at the end of August, Luis Gedi is described as being employed in the private sector while Ferdinand Luis Pakage is a parking attendant. Two of the accused, Selvius Bobii and Nelson Ipan Cornelius Rumbiak, the former a student and the latter a high school pupil, were sentenced to six years. The remaining twelve were all given five-year sentences. Eight are students: Penius Wakerkwa, Othen Dapyal, Thomas Ukago, Elyas Tamaka, Patrisius Aronggear, Mon Jefri Obaja Pawika, Bisiur Mising/Bensur Mirin and Alex C. Wayangkau. One, named Elkana Lokobal, is a high school pupil, while Mathius Michael Dimara is a newspaper vendor.

On 14 September, two of the other seven, Muhammad Kaitam and Sedrik Jimau, were found guilty and each given five-year sentences. As soon as the verdict was announced, a member of the defence team, David Sitorus, denounced the decision. 'None of the witnesses who testified saw the accused throwing anything at the security forces,' he said, angrily. 'As this court is nothing but a charade, we will use all legal means to get justice.' He told the court they would take the same attitude with regard to the others awaiting verdicts.

Hearings boycotted

The proceedings were delayed because the seven accused had decided to boycott the hearings. A hearing scheduled for 5 September was abandoned when the defendants refused to appear for the third time. The boycott action, which was supported by their team of lawyers, was taken because of the ill-treatment sustained by one of the defendants in the earlier trial, Nelson Rumbiak, who was summoned as a witness in the trial of the seven. One of the defendants' lawyers, Aloysius Renwarin, said the defendants would not appear in court until their demands had been met, namely a public apology from the Papua police chief and the head of the Jayapura Prosecutor's Office, and an official letter guaranteeing their safety.

Before the 5 September hearing was abandoned, the judge said that if they continued to refuse to attend, force may be used to bring them to the court room. One of the prosecutors suggested that the trial could proceed without the defendants being present. 'We will hear witnesses' testimony and then proceed to the sentencing recommendation,' he said. (According to trial procedures in Indonesia, after the prosecution has presented the charges

⁷ *Tapol Bulletin* 184, October 2006

⁸ See *Sekilas Informasi – Januari-Maret 2006*, issued by the Peace and Justice Secretariat of the Catholic Diocese of Jayapura, June 2006

⁹ West Papua Presentation To UN Economic & Social Council, Geneva, 2 August 2006

and witnesses and defendants have been heard, the prosecution makes a further statement in which it demands an appropriate sentence.)

Witnesses beaten by police

Some members of the police force who were in charge of security surrounding the court hearings of the seven defendants are reported to have struck one of the witnesses, Nelson Rumbiak (already sentenced to six years in the earlier trial) outside the Abepura Prison where all the defendants and convicted men were being held. The Advocacy Team stated that as the witnesses and three of the defendants arrived back at the prison, dozens of policemen were waiting there and struck Nelson Rumbiak on the head with rattan sticks. When he fell to the ground, several of the officers kicked him in the ribs with their heavy boots. This assault caused serious injuries and swellings in several parts of his body. Other police officers chased the defendants into the prison and even threatened to beat up prison officials who were trying to prevent the policemen from entering the prison. As soon as the defence lawyers and the parents of the defendants arrived at the prison, two vehicles that had brought the police to the prison, disappeared.

The victim of this assault was taken to Abepura Hospital for treatment. Even in the hospital, police intelligence agents intervened to prevent the medical team from examining the victim. Such was the chaos in the hospital that the parents of the victim and the hospital staff decided that his safety would be best secured if he was returned to the prison.

Ill-treatment during interrogations

When Nelson Rumbiak and others were called as prosecution witnesses at the trial of the seven, they told the court that they rejected the contents of the interrogation reports (BAP), which they had been forced to sign. They mentioned the names of the police officers who had exerted pressure on them to sign. One of them, Ferdinand Pakage, who was sentenced to 15 years in the earlier trial of the 17, told the court that he had been shot in the foot by a police officer.

On hearing this complaint, a member of the prosecution team said that police officers would be summoned to the next court hearing, but the officers who subsequently appeared were not the men whose names had been mentioned by Nelson Rumbiak and the others. When the men's lawyers protested and asked that the officers who had been named should appear, the presiding judge refused, without saying why.

A joint statement complaining about these serious violations was issued by the Advocacy Team, the Catholic Peace and Justice Secretariat, the GKI (Protestant Church), ELSHAM (the Institute for Human Rights Studies and Advocacy in Papua) and the Jakarta-based Legal Aid Institute, PBHI. It strongly condemned the behaviour of the police and demanded that those already sentenced and those currently being tried should be guaranteed full protection and that the officers responsible for the ill-treatment should be called to account.

Lawyers reported to the police

As if these violations were not enough to undermine any chance of the Papuans getting a fair trial, the chief prosecutor, Novianto SH, reported the seven lawyers defending the accused to the chief of police in Jayapura. The attorney alleged that the defence lawyers had violated two articles of the Indonesian Criminal Code when they stated that the clashes that occurred on 16 March had been initiated with police involvement and that, therefore, the men facing charges were themselves victims of violence.

A statement issued on 5 September by Amnesty International complained that the seven lawyers had been intimidated and had received death threats. Three of the lawyers, Johnson Panjaitan, Ecoline Situmorang and David Sitorus are from the PBHI, two, Aloysius Renwarin and Adolf Stef Waramory are from ELSHAM and two, Frederika Korain and Yustina Haluk are from the Peace and Justice Secretariat of the Catholic Diocese in Jayapura. According to Amnesty International, they have been followed and have received threatening messages

(SMS) on their mobile phones. Three received messages describing them as 'provocateurs'. The home of Aloysius Renwarin was pelted with stones.

The submission to this report by the Revd Socratez Sofyan Yoman provides a grim update on the situation described by Tapol:

"Eko Berotabui, son of the Synod chairman of the West Papuan Evangelical Christian Church, died in the Abepura prison on 2nd February 2007. Eko Berotabui was accused of being involved in 16th March 2006 Abepura incident. The death of Eko was suspicious and mysterious".

Special Autonomy – an opportunity missed

Since Papua was granted Special Autonomy status in 2001, the Australian government has argued strongly that this should satisfy the aspiration for self-determination of the Papuans and has called on Jakarta to implement the legislation faithfully. Unfortunately Jakarta has been unable (the government) or unwilling (the military and parts of the government) to do so. Under the influence of generals at the Interior Ministry, then President Megawati Sukarnoputri moved to split the province into three in 2003, although creating new provinces in West Papua has been vehemently opposed by most Papuans.

In any case, any new *pemekaran* (division) was supposed to be approved by an all-indigenous Papuan Peoples Assembly (MPR), which Jakarta had failed to establish. Even since the MPR was set up in 2005, it has been difficult to assert any authority over the divide-and-rule practice of creating new provinces. The process is being driven by Jakarta in collusion with trusted local allies. Both sides are interested in the resulting new proliferation of bureaucracy, money politics and military commands, even though Papua in 2001 was already among the smallest (by population) of all Indonesian provinces.

Despite an adverse Constitutional Court judgement, Jakarta did manage to establish the new province of West Irian Jaya (currently and confusingly being renamed West Papua) with a retired marine general as governor. However although Central Irian Jaya fell into abeyance after it provoked riots in the mining town - and capital-designate - of Timika, a push for South Papua (capital Merauke) is gathering steam.

In Papua, as in the rest of Indonesia, local elections for governors and bupati (regency heads) are now the order of the day, and all successful candidates so far have been native Papuans. Moreover large new revenues reflecting its rich natural resource endowment have flowed to Papua since 2001. But the results have been extremely disappointing. Proliferating bureaucracy, local and central corruption, and illegal military demands on local revenues, have swallowed up the lion's share of these trillions of rupiah. Papuan access to education, health services and essential infrastructure remains grossly inadequate¹⁰.

A special report by the US Council on Foreign Relations in 2006 called for the provisions of this law to be fully implemented, suggesting that it could lead to enhanced rights and status for West Papuan people, without requiring secession from Indonesia. They could, in time, obtain *merdeka* (social freedom and emancipation), it suggests, without *kemerdekaan* (political independence)¹¹.

General dissatisfaction with Special Autonomy in Papua was confirmed by an EU-funded survey, conducted in 2006 by the Indonesian NGO SNUP (National Solidarity for Papua) and *Kemitraan* (the World Bank-initiated Partnership for Governance Reform in Indonesia). Sixty per cent of the 323 respondents from six districts in Papua said they had no confidence that Special Autonomy would result in any improvement in their living conditions; 76% said Special Autonomy was not being well implemented and 62% said the local government structure was either totally or hardly capable of implementing the Special Autonomy law.

Moreover Special Autonomy has done nothing to restrain the police and military forces which continue to protect and profit from illegal timber extraction and other extra-legal activity. The military are able to countermand elected provincial authorities and to corrupt court processes at will. Military operations also nullify much development effort and student opportunities, especially for independence-minded highlanders. Highlands students have constantly been special targets of police and military violence in Jayapura and Jakarta.

¹⁰ *Papua Needs Assessment*, UNDP, 2005; 'Indonesian Academic Acknowledges Papuan Grievances', *The West Papua Report*, Robert F. Kennedy Memorial Center for Human Rights, Washington DC, August 2005

¹¹ *Peace in Papua – widening a window of opportunity*, Council on Foreign Relations, Washington DC, April 2006

Further abuses

Comments submitted to CPACS and the West Papua Project, for the compilation of this report, from the Reverend Socratez Sofyan Yoman of the Fellowship of Baptist Churches of West Papua, show how the implementation of Special Autonomy has, in practice, meant further abuses for its people to suffer.

A selection is quoted here:

The status of the Special Autonomy Law No 21/2001 has given the West Papuans a good opportunity to manage a special governmental system that could revitalize and protect the basic rights of the indigenous West Papuans.

However, the questions are:

- Has Special Autonomy stopped the tears and blood of the indigenous West Papuans which still continuously drop and flow on the land of West Papua because of the torture and the cruelty of the Indonesians for 43 years?
- Does Special Autonomy really guarantee the protection of the basic rights and the survival of the West Papuans in the future?
- Does Special Autonomy give proper space and opportunity for the indigenous West Papuans in the field of education, health and economy?
- Could Special Autonomy control the flood of migrants from outside West Papua who migrate to West Papua every week? There are three Royal Line passenger ships each with a 5,000 passenger capacity which bring 15,000 people to West Papua every week. (This figure does not include those who travel to West Papua by air every day.)
- Has Special Autonomy ended the military and the police mobile brigade (Brimob) operations in West Papua?

Special Autonomy has become a new problem and has brought suffering and has created more cruel oppression. Certainly a new problem cannot solve existing problems!

Revd Yoman goes on to detail how vast sums of money from Special Autonomy funds have been diverted from their proper purpose – to pay for improvements to public services – and used instead to underwrite military operations and pay for elections to proliferating levels of government. He comments:

The Indonesian police and military's violence, oppression, terror, and intimidation that has been carried out against the indigenous West Papuans has become the dominant [Indonesian policy] and has been successful on the Melanesian land of West Papua, whereas Special Autonomy has failed. In Special Autonomy there was a hope of improving the people's standards of living in the fields of health, economy, and education; however, Special Autonomy has become an even more complex problem. People have not enjoyed "being special" but are experiencing more suffering which increases continuously.

Basically, the indigenous West Papuans have realized that Special Autonomy will neither protect nor improve the lives of the indigenous West Papuans. The truth is that Special Autonomy simply gives the Indonesians more of a chance to use more cruel and inhuman policies to oppress the indigenous West Papuans through its military and police forces.

Failed Special Autonomy and Australia

The widely acknowledged failure of Special Autonomy nullifies the Australian government's favoured approach to appeasing Jakarta and the Papuans simultaneously. The failure to implement the Special Autonomy law, and the lack of any discernible improvements to people's living conditions attributable to the funds it was meant to bring with it, have sapped the faith of Papuan people that such arrangements will ever actually work in practice. The window of opportunity opened by *otsus* is closing.

A new approach is certainly called for—and a model for it is near at hand. In Aceh, a promising peace process going well beyond Special Autonomy is underway thanks to initiatives by President Yudhoyono and Vice President Jusuf Kalla and a mediation effort led by the former President of Finland, Martti Ahtisaari¹². Papua has been offered no such option, as Papuans have resentfully noted. Indeed military forces have been redeployed from Aceh to Papua, which is now by far the most militarised region of Indonesia. The church-driven Papuan campaign for Papua as a Land of Peace entails a plea for international mediation, and this diplomatic track is rapidly becoming a necessity in Australia's own interest if a regional and human catastrophe is to be averted.

Which brings us to the geopolitics of the crisis situation in Papua. For 45 years the Australian government has supported integration of West Papua into Indonesia, just as for 25 years it supported integration of East Timor into Indonesia. Neither project has worked in the interests of the indigenous people. East Timor is now independent thanks to InterFET (International Force East Timor), and what brought it about - the mobilization of Australian civil society against the Australian government, forcing it to organise and lead an international intervention.

Canberra has been at pains to deny that the InterFET intervention is any kind of precedent for the West Papua problem. But the Indonesian government remains unconvinced despite the draconian provisions of the Lombok Treaty which seem to rule it out. The fact is that, in Indonesian eyes, the Australian government is only one player on West Papua and is well capable of being trumped by another - Australian churches, media, journalists, academics and Papua support groups acting in unison for the Papuans. Hence the blacklisting of Australian academics, activists and even universities. Hence Jakarta's incurable nervousness about Papuan "separatism" in the light of the East Timor denouement. This saw Australia's superior military, diplomatic and (in the end) moral resources arrayed against a vengeful Indonesian military machine funded unscrupulously for its militia mayhem against the people of East Timor during 1999 by a wide array of civilian ministries in Jakarta¹³.

The lesson of all this is that both the Australian and Indonesian governments must acknowledge the problems in Papua. It is not enough to pretending that all is well by swearing, on the one hand (Australia), never to intervene, and, on the other hand (Indonesia), that there is nothing to intervene about. Unless this happens, civil society anger and Australia's military, diplomatic and (we might say) historical advantages will come into play once again, probably on the back of a large-scale security crackdown or popular uprising, or both, in Papua.

It is argued that Jakarta cannot afford to "lose" Papua because of its sheer size (nearly a quarter of Indonesia's land territory), resource endowment and revenue contribution - more than a billion US dollars per annum from the Freeport mine alone in recent boom years. Also it is said that the military will never let go of its Papuan dependency while the TNI's so-called territorial function is intact and it has lost the other two fiefdoms - East Timor and Aceh - where its word was law and its opportunities for black enterprise, including the creation of "security" threats to perpetuate its own *raison d'être*, were legion.

But by neglecting conventional external defence in favour of domestic repression, illegal business activity and extortion, the TNI has laid itself open not to domestic revulsion and radical military

¹² Edward Aspinall, *The Helsinki Peace Agreement: A more promising basis for peace in Aceh?* East West Center Policy Paper, Washington DC, 2005.

¹³ Peter King, 'The Spectre of Independence from East Timor to West Papua' in *Good Neighbour, Bad Neighbour: What's the difference? Australia's relations with Indonesia*, Papers from the Uniya Seminar Series, Uniya Jesuit Social Justice Centre, Sydney, 2006

reform under civilian leadership as well as another Timor-style lesson in Papua. Indeed, Indonesian democratic reform in the *reformasi* era cannot be carried through without a successful challenge to military money politics and all-round impunity in Papua such as has been achieved in Timor and, apparently, Aceh. So far, Papuans have found *reformasi* resoundingly ironic rather than constructively engaging.

Australia has both rights and interests as well as duties in the future disposition of West Papua. As peace enforcer of first resort (albeit reluctant) in the Solomon Islands, East Timor and Papua New Guinea (Bougainville), and with a long history of concern for the stability of New Guinea island in two world wars and before, Australia will inevitably be involved in any Timor-style meltdown in Papua. Moreover, the environmentally destructive and socially and politically debilitating effects of unrestrained rainforest logging and associated grand corruption - at both ends of New Guinea island - need to be urgently brought under control by both local and international action. The TNI is now deeply involved with the logging industry in Papua New Guinea as well as West Papua--in particular through the Sino-Malaysian company which has made PNG's political elite into a corporate vassal, Rimbunan Hijao¹⁴.

In brief, the Lombok Treaty cannot arrest the drift towards a potentially disastrous but possibly also liberating day of reckoning between Australia and Indonesia over Papua. Australia and Indonesia - governments and civil societies alike – are running out of time to get a grip on a situation which remains a dire threat to the interests of Australians, Indonesians and Papuans alike.

¹⁴ *Bulldozing progress: human rights abuses and corruption in Papua New Guinea's large scale logging industry*, The Centre for Environmental Law and Community Rights (Boroko) and The Australian Conservation Foundation, Sydney, 2006

The Australia–Indonesia Security Treaty

The so-called Lombok Treaty signed on 13 November 2006 states in Article 1 that it will aim

“1. To provide a framework for the deepening and expanding bilateral cooperation and exchanges as well as to intensify cooperation and consultation between the Parties in areas of mutual interest and concern on matters affecting their common security as well as their respective national security.

2. To establish a bilateral consultative mechanism with a view to encouraging intensive dialogue, exchanges and implementation of cooperative activities as well as strengthening institutional relationships pursuant to this agreement”.

These are very broad statements and concern for each country’s ‘respective national security’ should never be allowed to overcome recognition of basic human rights, in both countries. Not only are freedom of speech and association basic human rights, so is the right to speak out on behalf of others when their basic human rights are trammelled. These rights seem to be threatened by Article 2.3 of the Agreement:

“ARTICLE 2.3 and 2.2 (PRINCIPLES)

2.2 Mutual respect and support for the sovereignty, territorial integrity, national unity and political independence of each other, and also non-interference in the internal affairs of one another;

2.3 The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other party”.

One interpretation of this statement would suggest that either Party (the respective Governments) will not have a part (*participate*) in any of the stated activities. This implies that individuals, who are not governments, can *participate* in such activities, *consistent with their respective domestic laws*.

Interpretation of the International Commission of Jurists (ICJ), Australia

John Dowd, AO, QC, former Attorney-general of NSW and President of ICJ, Australia, has a quite different and much less benign interpretation of this Agreement in his submission to the Australian Parliament’s Joint Standing Committee on Treaties (JSCT). He starts his submission by pointing out the loosely worded Agreement will create confusion and misunderstandings:

That the generality of the terminology used in the treaty will result in differing interpretations and emphasis between the government of Australia and the Republic of Indonesia. This will mean that Indonesia is likely to pressure the Australian Government to interpret any treaty that comes into existence from a different point of view to that of the Australian Government, and may well result in pressure being brought to bear [on] civil servants and government agencies to carry out the Indonesian interpretation of the treaty rather than an Australian point of view or an objective point of view.

Further:

That the expression in the Preamble, ‘Emphasising the importance of working together through regional and international fora on security matters to contribute to the maintenance of international peace and security’ encompasses wording of the widest general import and the use of the word ‘security’ and the terms ‘maintenance of international peace and security’ will encompass an extremely wide range of activities, including matters of migration and refugee movements which are covered by international treaties. This could be used to justify Australian police surveillance of Human Rights’ groups and activities within Australia.

The effect of the treaty may be to curtail Australians’ right to free speech and expression, even to the extent that legitimate comment on current issues of concern within Indonesia,

such as human rights abuses, may draw the attention of Australian security forces. Besides the restrictions that the treaty may place on individual Australians, the Australian Government would also be restricted in its comments.

Mr Dowd further comments:

Similarly, Principle 2 of Article 2 is couched in such terms as will severely limit the capacity of Australia to comment on human rights abuses or any breaches of humanitarian law and thus limit Australia as against any other country in the world having the right to criticise.

If this treaty had existed at the time of the lead-up to the popular consultations in Timor L'Este, the government of Australia would have been precluded from agitating for the process which led to the freedom for the people of Timor L'Este.

The restriction on commenting on Indonesian activities might even go so far as to infringe our existing international obligations to other countries in the region:

Principle 3 of Article 2 would prevent Australia with its existing obligations to countries like Papua New Guinea and Timor L'Este for criticising any activity which may involve an incursion by Indonesia into the territory of Timor L'Este or Papua New Guinea under the contention that there are activities across the border which affect the 'sovereignty or territorial integrity' of Indonesia.

After noting all these grave implications of the agreement Mr Dowd concludes that there is no immediate need for this treaty and that it should be withdrawn.

The Indonesian Government's view of the Treaty

Indonesian Foreign Minister Hasan Wirajuda made clear his view of the implications of the treaty in an interview with *The Australian* newspaper just prior to his signing of the treaty with his Australian counterpart, Alexander Downer:

Besides principles of respecting territorial integrity, sovereignty, not interfering in domestic affairs – one important principle in this agreement is that both parties will not use or support separatist movements and will not use their territory as a standing point for separatist movements¹⁵.

There seems to be a complete blurring here between actions that the Australian government agrees to undertake and what non-governmental actions are allowed to occur within Australia under the terms of the treaty. It appears that Foreign Minister Wirajuda understands the treaty to mean that the Australian government will not allow what the Indonesians term 'separatist movements' to exist. He spells this out by saying that Prime Minister John Howard had guaranteed earlier this year (2006) that Australia "would not be used as bases or staging (posts) for separatists".

"And now it's in the framework of a security agreement," Mr Wirajuda said. "Certainly this agreement will be the guiding principle on how Indonesia manages its relations with Australia and vice versa", he said: "It's a question of principle that's very clear, there's no doubt about that. That commitment is no longer verbal, but a treaty-based commitment".

"The framework of security agreement is something ... that we hope is an important contribution to improve the relationship between Indonesia and Australia", he said.

The trouble with Mr Wirajuda's comments is that they incorporate terms that are not clarified. What do the terms: 'separatist movements'; 'standing point'; 'staging posts'; and 'separatists', actually mean? It seems that Mr Wirajuda believes that the treaty would force the Australian government to, in effect, outlaw all people, organisations and activities that fall within these terms, even though the terms themselves are not defined. Is non-violent support for an independent West Papua, as

¹⁵ 'Australia vows to oppose separatists', *The Australian*, November 10, 2006

expressed by an Australian citizen now against the law? The Australian government apparently has a different view.

The Australian Government's view of the Treaty

In an Australian Department of Foreign Affairs and Trade (DFAT) National Interest Analysis (NIA) document a somewhat more benign interpretation is offered¹⁶. This official interpretation of the treaty was written by the organisation which co-drafted and negotiated the text. None of the concerns expressed by Mr Dowd, above, are to be found here. In particular concerning Article 2.3, which is the article that Foreign Minister Wirajuda is referring to in his comments above, there is a statement of what *would* be allowed:

Article 2(3) provides a treaty-level commitment that Australia and Indonesia shall not in any manner support or participate in activities by any person or entity which constitutes a threat to stability, sovereignty or territorial integrity of the other party. These principles are to be interpreted in a manner consistent with the Parties' existing international obligations, including those under the United Nations Charter, and their respective domestic laws. The obligation set out in Article 2(3) would not prevent peaceful demonstrations conducted in accordance with the law, political commentary or free speech from occurring.

This seems to be at odds with Mr Wirajuda's interpretation of the agreement: what if 'peaceful demonstrations' are calling for an independent West Papua; what of 'political commentary' and 'free speech' helping to publicise the plight of the West Papuans and galvanise political action for their cause? These might sound like a 'staging post' or 'separatist movement' to some.

Indonesian civil society's view of the Treaty

Indonesian society is made up of more than the military/business elite. Leading human rights organisations and activists are also against the treaty on the grounds that it is a backward step for the country: entrenching the position of the military and blocking democratic development of Indonesia.

Suciwati is a labor activist and widow of (murdered) former human rights advocate and *Kontras* coordinator, Munir Said Thalib. Usman Hamid is the present coordinator of Kontras, the Commission for Disappearances and Victims of Violence, in Jakarta. On February 3, 2007, speaking at the NSW Parliament while on a trip to Australia, they both expressed strong disapproval of the treaty.

Hamid said that it "will undermine human rights" since it endorses cooperation with the TNI (Indonesian armed forces). Despite new laws TNI still functions under the old territorial system whereby, in Hamid's words, "Our people – the urban poor and the peasants – are the enemy. Until today TNI is on top at every level of administration"--in the regions at both province and district level.

Suciwati's husband, Munir, was poisoned on a Garuda flight between Jakarta and Singapore on his way to undertake graduate studies in the Netherlands. He had been highly critical of TNI and the Indonesian security forces. It is widely believed that the Indonesian intelligence service, BIN, had a hand in his murder, yet the only suspect imprisoned for the crime has since been freed on appeal. Even President Susilo Bambang Yudhoyono has said (to Hamid and Suciwati) that solving the Munir case is "a test of our history". Yet no effective independent investigation has been able to proceed because the vested interests of the TNI/security elite are too powerful – even for the President – to take on.

Signing the treaty simply strengthens the nefarious elements within Indonesian society and undermines the positive elements, such as those struggling for justice and human rights. Thus, at a

¹⁶ NIA Consultation and Background information for Framework for Security Cooperation, Joint Standing Committee on Treaties, Commonwealth Parliament, website: <http://www.aph.gov.au/house/committee/jsct/6december2006/tor.htm>

crucial juncture in Indonesia's development, Australia is playing a negative role in the development of civil society and a truly democratic Indonesia.

Conclusion: Blundering In?

Ratifying the Australia-Indonesia treaty will make Australia a de facto military ally with Indonesia in its undeclared war against the West Papuan people. Australia will provide training, funding and material aid to TNI forces who are currently engaged in what many West Papuans consider is genocide. We will be taking sides in a conflict that has been largely hidden from the world for decades, but is now starting to become more widely known as the pace and scale of the Indonesia–West Papuan conflict intensifies. Australia risks blundering into a human rights mess that will exacerbate the conflict by emboldening the TNI while diminishing the human rights of West Papuans, Indonesians and Australians. Is this what Australians really want: being an active party to the obliteration of the West Papuans?

This treaty will strengthen the TNI and entrench the culture of impunity that has brought misery to so many people. Rather than encouraging democratic reform and an accountable, civilian-controlled military, this treaty is giving precisely the opposite message: that the military is untouchable. It will fuel repression as the TNI continue to stoke conflict in order to justify their lucrative grip on West Papua. This drives off foreign investment in all but the most destructive sectors of the economy such as logging (mostly illegal); mining and oil/gas extraction, as well as the plunder of the oceans.

Besides the negative outcomes that this treaty has for the people of Indonesia, it also holds dangers for Australians and even Australian democracy. It is a right, and arguably a duty, to speak out on behalf of our neighbours who are being severely repressed, dispossessed and marginalised, yet this treaty, at least in the eyes of official Indonesians, would make such concern criminal. We would be unable to openly criticise Indonesian military excesses without being branded separatists – the TNI having explicitly stated that support for human rights is seen as support for separatism. Worse still, those people who believe that West Papua is entitled to independence could be the subject of government surveillance or punishment - here in Australia.

This treaty will, in effect, give Indonesian generals the right to determine what Australians can do and say. Alternatively, demands by Indonesia that some Australians are supporting West Papuan separatists and should be suppressed, if ignored, will only create conflict between Australia and Indonesia. Indeed this treaty may prove to be as short lived as the last security treaty with Indonesia, secretly negotiated by former Prime Minister Paul Keating in 1995. It fell apart at the first sign of serious conflict with Indonesia over East Timor. That would leave Australian–Indonesian relations, vital to both countries, in an even worse state.

Recommendations

We therefore call on the Australian government to consider the following:

- An Australian Parliamentary delegation should visit the province of Papua to determine first-hand the current political situation and reflect whether Australia wants to give TNI a blank cheque in Papua, and whether participation in the Lombok Treaty will enhance Australia's security and encourage Indonesia's democratisation.
- The exact consequences of Article 2.3 should be made explicit. For instance, will the peaceful expression of support: spoken; written and acted out, for self-determination or independence for West Papua, including providing support and shelter for West Papuan independence activists, constitute a breach of this Treaty, and if so, what action would the Australian government take, and under what laws(s).
- The Treaty text needs to be amended to affirm the upholding of human rights, both in Australia and Indonesia, as being the supreme duty of any government to its citizens. Without this the treaty will only reflect the vested interests of the few, including temporarily empowered public servants and politicians. The right of movement of media and human rights monitors to areas of conflict is vital.

About the authors

Jim Elmslie is a Research Fellow with the Centre for Peace and Conflict Studies, University of Sydney.

Peter King is a Research Associate in Government and International Relations at the University of Sydney.

Since 2000 the two have been Co-convenors of the West Papua Project within CPACS.

Jake Lynch is the Centre's Director.

West Papua Project Publications (available online)

[West Papua Project position paper 1: Peaceful Dialogues over West Papua: the Design of a Way Forward](#), March 2001 (WORD)

[West Papua Project position paper 2: Exploring the Prospects of Peace with Justice: Report on a Workshop and Future Plans](#), September 2001 (WORD)

[West Papua Project position paper 3: West Papua: Reconciliation as a Way of Promoting Peace Dialogue](#), May 2002 (WORD)

[West Papua Project position paper 4: Reconciliation and Consolidation Among Papuans: Report on Workshop III](#), January 2003. (revised April 2004) (WORD)

[West Papua Project position paper 5: Peacebuilding and Development in West Papua – Dialogue versus Violence: Hearing other Voices. Report of Workshop IV](#), August 2004 (WORD)

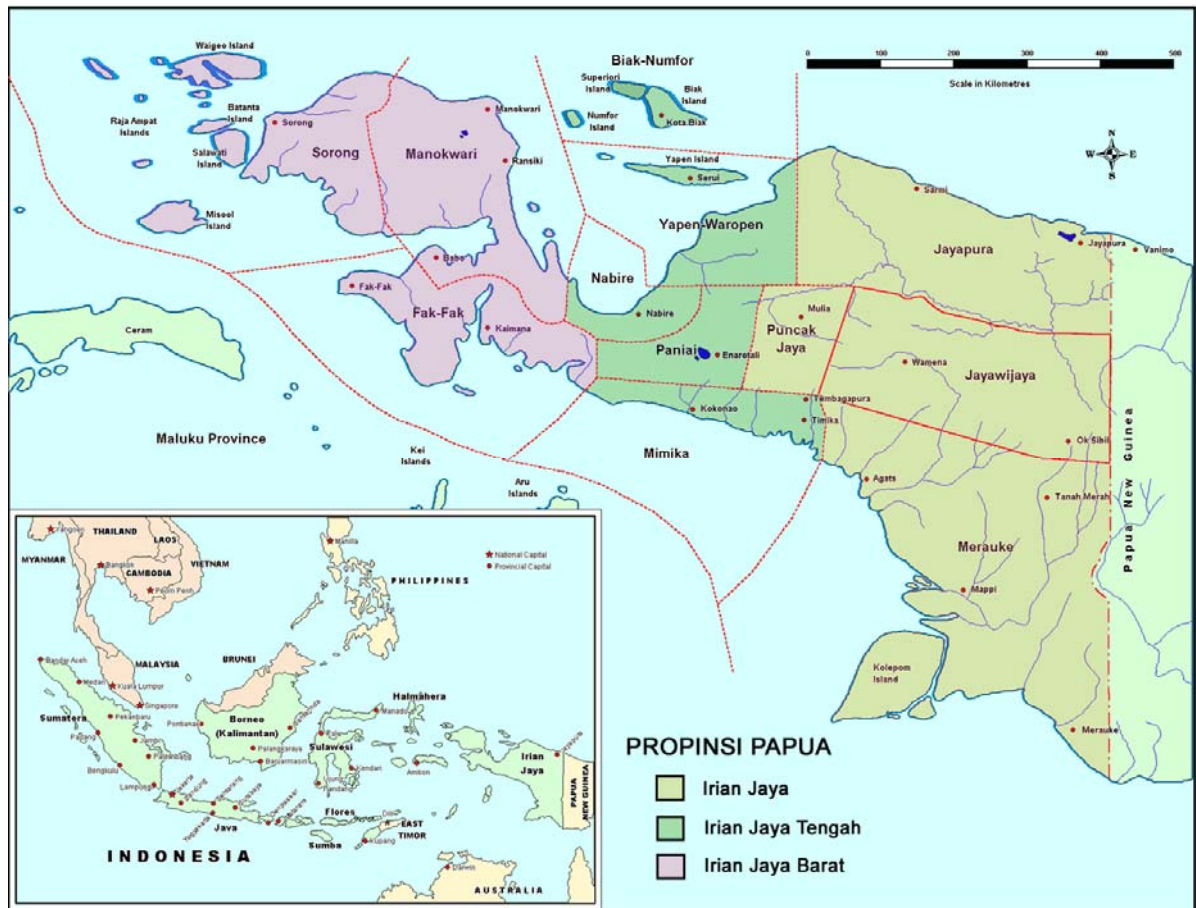
John Wing with Peter King, *Genocide in West Papua? The role of the Indonesian state apparatus and a current needs assessment of the Papuan people*, A report prepared for the West Papua Project and ELSHAM Jayapura, CPACS, Sydney, August 2005

Books by West Papua Project members

Denise Leith, *The Politics of Power: Freeport in Suharto's Indonesia*, University of Hawaii Press, 2002

Jim Elmslie, *Irian Jaya Under the Gun: Indonesian Economic Development Versus West Papuan Nationalism*, University of Hawaii Press, 2002

Peter King, *West Papua and Indonesia since Suharto: Independence, Autonomy or Chaos?* UNSW Press, 2004



Map courtesy of Papuaweb, Research School of Pacific and Asian Studies, Australian National University